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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,414	12/28/2000	Michael Tod Morman	KCC-15,848	7833

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EXAMINER

GUARRIELLO, JOHN J

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

89/951414

Applicant(s)

Morman et al.

Examiner

John Guarniello

Group Art Unit

1771

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 1/2/2003
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 24-50, 56-60 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 24-50, 56-60 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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DETAILED ACTION

15. The Examiner acknowledges the amendment of paper # 8 of 1/2/2003.

Election/Restriction

16. The Restriction is acknowledged without traverse as directed to Group II, claims 24-50, 56-60. New claims, 57-60, are directed to Group II.

Restriction is made final for reasons of record.

17. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

18. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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19. Applicant's amendment of 1/2/2003 has removed the rejection under 35 U.S.C. second paragraph of section 112 for claim 56.

Claim Rejections - 35 USC § 102

20. Claims 24-32, 41-50 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 98/05501.

Rejection is maintained substantially as in paper # 7 of 10/2/2002.

WO'501 describes films made of polyethylenes and fillers, and articles made therefrom with a greater WVTR (water vapor transmission rate) than previously available films base on conventional Zeigler-Natta based polyethylenes, (see abstract; page 1, lines 10-16; page 2, lines 22-31).

WO'051 describes using the high WVTR films in combination with polymeric woven and non-woven materials (corresponding to nonwoven web) for consumer articles like diapers, adult incontinence devices, feminine hygiene articles, medical and surgical gowns, medical drapes, industrial apparel and

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building products like housewrap and roofing components, (page 4, lines 10-27; page 5, lines 18-23), which can be laminates. WO'051 describes WVTR rates corresponding to greater than 100 g/square meter/day and greater than 3000 g/square meter/day which overlap the WVTR values of the claimed invention, (page 10, lines 1-18). WO'051 describes the films can be used in laminated structures, (page 5, lines 17-24). WO'051 describes the essential limitations of the claimed invention. Claims lack novelty.

Applicant's arguments regarding the WVTR values have been considered but WO'051 describes WVTR values which overlap applicant's value of 500 grams/square meter/ 24 hours (as noted above as one day), (page 10, lines 3-8). WO'051 describes various stretching parameters which would overlap the first and second transmission rates which applicant argues, (page 9, lines 4-24).

Claim Rejections - 35 USC § 103

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21. Claims 24, 33-50, 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobylivker et al 6,002,064 in view of WO 98/05501.

Rejection is maintained substantially as in paper # 7 of 10/2/2002.

Kobylivker describes stretch thinned polymeric film from a mixture of polymer matrix with a particulate filler which can be laminated to a nonwoven web for a wide variety of medical apparel and related products, (see abstract; column 1 lines 20-43). Kobylivker describes laminates which include the stretch thinned polymeric films with one or more nonwoven webs, (column 2, lines 16-19, lines 46-54). Kobylivker describes breathable film with a WVTR of at least 300 grams/ square meter-24 hours and nonwoven webs made by meltblowing, spunbonding, and bonded card processes, (column 3, lines 45-55; column 4, lines 1-35). Kobylivker describes the polymer matrix, (column 5, lines 59-67; column 6, lines 1-44). Kobylivker describes the filler particles, (column 6, lines 50-67). Kobylivker describes the laminate, (column 8, lines 51-58). Kobylivker differs from the claimed invention because it is silent about diaper, training pant and swimwear.

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WO 98/05501 as is paragraph # 24.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the film laminate of Kobylivker for use as breathable end use applications (column 8, lines 57-58) , with the materials of WO'501 of diaper, training pant and swimwear, motivated with the expectation that lighter weight and softer film laminate resulting for these utilities can be appropriately utilized by one of ordinary skill in this art. Further uses are describes by Kobylivker for other medical apparel, (column 9, lines 56-64).

Applicant's arguments regarding the degree of stretch is "only 25 % greater" but applicant's claimed invention says "at least 25% greater", it is the Examiner's position that applicant's arguments regarding stretch do not reflect what is claimed. Applicant's arguments regarding the limitations in claims 33-35, and 39,40 have been considered, but they were not considered allowable. Kobylivker describes laminates with multilayer structure, (column 2, lines 15-19); Kobylivker describes air, (column 4, lines 10-26);

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Kobylivker describes stretching, (column 7, lines 31-50); Kobylivker describes spunbonded and crimped webs (column 9, lines 1-22).

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am. to 4 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

John J. Guarriello:gj

Patent Examiner

February 28, 2003, March 7, 2003



TERREL MORRIS
SUPERVISORY PATENT EXAMINER
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